DOCUMENT RESUME

ED 139 890 UD 017 033

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TITLE Federal and State Roles in School Desegregation: A Discussion and Analysis.
PUB DATE [77]
NOTE 27p.

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS Change Agents; *Educational Policy; Equal Education; *Federal Legislation; *Government Role; *Historical Reviews; Policy Formation; *School Integration; Social Action; Social Change; *State Legislation

ABSTRACT

This paper discusses the role and function of the federal government and of the states in school desegregation. Through a historical review, the many policies, programs, and actions which have created and influenced the federal government's conduct in school desegregation since 1954 are traced. Probably the most significant part of the federal role is its performance as the pacesetter and catalyst on social issues. School desegregation has been no different. The courts and legislation have attempted to change the education system to make more equitable opportunities. The Fourteenth Amendment is an example of this effort. There is a definitely different role being performed by the states than the federal government. This role has been minimal to nonexistent in most states. Few states have really played decisive roles in forcing the elimination of segregation in public schools through each state. In 1976, at most a dozen states were actually participating at the same time with the federal effort to initiate desegregation policies and plans. The positive and active federal role has become somewhat limited during the last 8 years by the less than supportive leadership of the president. This has not prevented a federal role, but it has curtailed the vigorous enforcement role and standards established by the courts in the late 1960's. It is suggested that as the federal role remains strong, the state role must expand as it is its responsibility under the Constitution to require equal education opportunity for its citizens. The two roles do not have to run counter to each other but can be complementary and help in instituting better school desegregation. (Author/AM)

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FEDERAL AND STATE ROLES IN SCHOOL DESEGREGATION:

A DISCUSSION AND ANALYSIS

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FEDERAL AND STATE ROLES IN SCHOOL DESEGREGATION: A DISCUSSION AND ANALYSIS

Probably the most volatile educational issue of the twentieth century has been school desegregation. Its requirement by the federal courts and government in many southern and more recently northern communities has caused disruptive actions in many cities. There is no question that school desegregation has been a vital part of the civil rights movement, finding its impetus in the landmark court decision of Brown v. Board of Education Topeka, Kansas in 1954. For the most part the federal role of education was almost nil at that time. And, there is no question that states' roles were quite strong in the area of segregation. State and local statutes existed requiring dual school systems -- one for whites and one for blacks. This was predominant in the deep South but not exclusively. Even Washington, D.C., the Nation's Capital, had segregated schools. In the North, many local systems did not mandate black and white schools in so many words, but had board decisions that created segregated systems.

Since Brown I, a significant federal role has evolved and challenged the states' role in endorsing segregated school systems and perpetuating unequal educational opportunities. Presently, the state role has changed due to several landmark court decisions outlawing dual systems and forcing the federal government to bring school systems into compliance with the law. Still federal and state governments seem to play two distinct roles in school desegregation. This chapter will discuss and analyze these roles and how state and federal policy interface on the subject of school desegregation.

The chapter has a brief background of some of the initial court decisions that helped create the current federal role. Through an historical perspective, there is an evolution of a federal presence. This is followed by a discussion of many of the policies, programs and actions

which have created and influenced the federal government's conduct in school desegregation since 1954. Then there is discussion of the present role of states in school desegregation. This is followed by some comments on the future roles for both entities. Even though the chapter is to be divided between federal and state policy, several times their roles will be discussed simultaneously to provide a clearer perspective. Throughout this discussion, events will be mentioned which have influenced and impacted on the speed and thoroughness of the implementation of school desegregation in the South and the North. Much of what is reviewed in the background is not new, but needs to be stated to provide a perspective and orientation to this subject -- federal and state roles in school desegregation.

BACKGROUND

One does not have to go back very far in time to read about the issue of school desegregation. The legal battle to eliminate segregation in education in our society has occurred primarily during the last 40 years. Several court decisions helped pave the way for the rise in the civil rights movement. Probably one of the best sources for a comprehensive history of desegregation court cases is Frank Reed's (1975) article "Judicial Evolution of the Law of School Integration Since Brown v. Board of Education." Another excellent discussion of the law is in Education Policy and the Law by David Kirp and Mark Yudof (1974).

The unanimous decision of the Supreme Court in Brown I (1954) overturned the doctrine of "separate but equal," and began a new era in the fight for civil rights.

> "The Supreme Court interpreted the equal protection clause of the fourteenth amendment as flatly prohibiting state imposed segregation of the races in the public schools by

stating: 'We conclude that in the field of education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.'" (347 U.S. at 495.)

Even with a decision a year later in Brown II that included the famous words to the federal district courts to insure that desegregation proceeds with "all deliberate speed" and in Brown I the decision that states must provide equal education opportunities to all, little movement was seen in the desegregation of school in either the North or the South. The first sign of an executive federal action was seen in 1957 and 1958 with the evolution of the Little Rock, Arkansas case -- Cooper v. Aaron (1958). The decision made by President Eisenhower was a fledgling beginning to a federal role in desegregation. His assigning of Federal troops and the federalizing of the Arkansas National Guard to protect the handfull of Negro students who wished to enter Central High School signaled a new role. The Supreme Court's decision was also a strong statement about the protection of the constitutional right to equal education opportunities and to allow the use of Federal troops to protect those rights no matter how intense or violent was the objection.

Since the Little Rock episode, a federal and state role emerged. The latter role has become larger during the last 5 years while the former has matured since the passage of the 1964 Civil Rights Act. The courts have been crucial in developing a standard and setting a tone for the federal policy and role. It is one of three components of what will be described as the "enforcer" role. The other two are "compliance review" and "insuring rights." There are three other parts to the federal role -- "programmatic assistance," "legislation," and "moral leadership." This last one, to a great degree, is influenced by the attitude of the resident of the White House and, in part, by the proposed legislation emergency in the halls of Congress. All four are significant and interface with each other on creating the federal role in school desegregation.

THE FEDERAL ROLE

If one had read any newspapers, news magazines or listened to national television during the past 3 years, the individual should have some sense of a federal presence in education. Recently the greatest exposure of a federal role has been in school desegregation. Most noticeable have been Boston, Louisville, Dallas, Denver and Milwaukee. These were not the first efforts by the federal government to be involved in the desegregation of schools outside of the courts. As was mentioned previously, the decision by President Eisenhower to federalize the Arkansas National Guard in order that black children could attend Little Rock's Central High School in 1958. Federal marshals and some troops were used in the early 1960s to insure equal education opportunities both at public schools and institutions of higher education.

This activity is what shall be labeled "the enforcer" role of the federal government in school desegregation. This is one of the four ways the "feds" have taken responsibility. The others are "programmatic assistance," "legislation" and "moral leadership." The first three are very tangible and quantifiable, whereas the "moral leadership" role is more qualitative and has been set by the public perception of the federal policy in desegregation -- other than court decisions and by a tone from the White House.

Enforcement as a role of the federal government can be subdivided into three categories -- (1) legal review by the courts; (2) compliance review; and (3) "insuring rights." The third category has been limited during current desegregation efforts but probably most prominant in people's minds as a result of Eisenhower's action in Little Rock. This action as "the enforcer" to insure and protect the constitutional rights of citizens also set a level of understanding that the federal posture would be one that would not allow states (including governments) to violate the constitution and ignore court orders. Little Rock would

not be the last time Federal marshals would have to be used to insure safety and adherence to the Law. Governor Faubus was the first to stand in the school house door, but George Wallace in the early 60s is better remembered for his rejection of the federal court order to integrate. He, too, was confronted by Federal marshals. They were used throughout the Deep South during the 1960s to protect the rights of blacks in all of the civil rights areas. Americans were cognizant of this federal presence and function through media coverage of many events, including the troops in Little Rock. This indication of intent to enforce court decisions and insure civil liberties achieved its zenith in the mid-1960s under the Kennedy and Johnson White House years. It was not only the height of the civil rights movement but a period in which basic standards were laid for school desegregation in each of the four federal role areas. This will be expanded later.

The enforcement capability, especially the insuring of rights, of the federal government did not end in 1968. The "show of force" strategy was altered due to a change in the White House. A lower profile many times was used through the Community Relations Service (CRS) of the Department of Justice. This division, after the Civil Rights Act of 1964, became a critical factor in preventing or lessening racial conflict (one of many responsibilities including work in Omaha, Detroit, Memphis, Milwaukee and Denver). CRS many times has been the mediator during conflict while also being a service of the federal government and thus has often worn two hats in delicate situations to make sure rights were not being violated. In a recent desegregation effort, CRS has been the representative of the court -- "the eyes and ears in the community" for Judge Garrity in Boston.

As in Little Rock and other southern cities, the Attorney General had a heavy presence in Boston, during Phase II (year two) of desegregation since Phase I had been filled with community conflict and violence. Marshals were in full view as a show of force with local police. This was a strong visible federal presence in any northern city and definitely was a statement on enforcement of the Law.

Similarly, Louisville had a strong nonvisible federal presence. CRS was there as were federal marshals, but unknown to most of the public. A strong state enforcement posture was taken by the Governor who used the Kentucky National Guard. They were used to deter disruptions and insure a smooth implementation. Since the Governor had taken such a strong position, there was no need for a heavy federal presence. But, the federal presence had already been felt by the federal district court decision.

There are several reasons for the alteration in the "enforcer/insurer of rights" role. Much of it has to do with the change in the times, in that people came to understand and accept the court orders. It was definitely a socialization process. This is not to say that attitudes switched in that racism was eliminated, but that people in most instances face the facts that the Law required school desegregation.

The passage of landmark legislation under President Lyndon Johnson after the death of John Kennedy, coupled with the rising civil rights movement 1963 March on Washington, set a tone of moral leadership. This is one instance where all four areas crosscut each other. The President was the strong advocate -- encouraging legislation which gave teeth to both enforcement of the law and programs to assist in the implementation of school desegregation. The Civil Rights Act of 1964 became the new policy. It set standards. The new role was that of enforcing the law through compliance review of school systems by the newly established Office for Civil Rights in HEW and providing programs in Section 403 through 405 of Title IV of the Act. The Act mandated an active federal role. The Attorney General was now able to file suits on school desegregation (U.S. Commission on Civil Rights, 1975), and it requested an impact study which became known as the Coleman Report along with compliance review of and technical assistance for school desegregation.

A new era arose in 1964 with the enactment of the Civil Rights Act. Section 601 of the Act stated in law for the first time:

"No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

A federal role was clear. Through use of guidelines and regulations there could be threatened or actual cut-off of federal funds. The government could order compliance. Desegregation increased for a 5-year period after the legislation. This occurred primarily in the South. The progress was enormous considering the poor record of litigation as the tool to encourage desegregation begun with Brown in 1954. (U.S. Commission for Civil Rights, 1975c.) This subterfuge to the desegregation process was manifested in many ways. Some of these were massive resistance by the states, "freedom of choice" desegregation plans, and establishment of white academies. These were coupled with what could be characterized as a revolving door of appeals of the court decisions. Even though there was a shift in policy with a new administration in 1969 (Nixon) away from administrative fund cut-offs, the capability for a federal role remained. Two court cases in the early 1970s, one attacking OCR's inability to bring into compliance southern systems (Adams v. Richardson) and the other, a similar case having to do with 33 northern districts (Brown v. Weinberger/Mathews), tested the commitment of the federal compliance role. It has not been the case that OCR did not become involved in compliance review. It has been involved, but leadership to encourage strong efforts and bureaucratic tangles decreased the activity and effectiveness of the agency. It did withdraw funds from Ferndale, Michigan, which indicated that, if brought to the edge, it would act. However, recent legislation in the 94th Congress withdraw that power from OCR. This lessens, in part, the "enforcer role."

The HEW compliance activities were definitely minimized during the Nixon-Ford years. This was due to the policy of the executive branch of

not being interested in an active federal role in desegregation of public schools. Both Nixon and Ford openly opposed the methods used to desegregate schools and many of the determinations by federal courts, including the Supreme Court. Probably one of the most significant statements which affected not only a federal role but also the public attitude toward the process was made by President Nixon in 1971 in which he disavowed an HEW desegregation policy. He said that he "consistently opposed busing of our nation's school children to achieve racial balance" and "...was opposed to the busing of children for the sake of busing." (U.S. Commission for Civil Rights, 1975.) It was the first time any President had taken such a hard negative stance. This statement, coupled with orders to the Attorney General and HEW Secretary "to hold busing to the minimum required by law," offered the enemies of desegregation ammunition to fight a new battle. There is no question that this was a low point for "moral leadership" in the battle for civil rights. At this point, a strong federal stance was severely shattered. There was definitely a retreat in desegregation intiatives both in OCR and the Department of Justice. This also gave anti-busing supporters a false sense of hope that anti-busing legislation would be enacted which would eventually terminate federal school desegregation efforts.

Luckily the courts did not listen to the President and continued to render court decisions requiring the transportation of students. In fact, the years 1968 through 1974 were very active years on the bench. These included decisions for such cities as Charlotte, Denver, San Francisco, Louisville, Boston and Detroit.

President Ford did not remain neutral, either, on this topic. He made a similar statement about Judge Garrity's decision in Morgan v. Hennigan (Boston) which helped fuel the already enflamed Boston community. In 1976, President Ford asked Attorney General Levi to look for a new case that would set new standards (lesser ones) for school desegregation and also to draft more controlling legislation, including creating time

limits to court orders, and changing the traditional supervisory role of the courts. It was an attempt to redefine and redirect the federal role through lessening its review and influence in requiring school desegregation. However, it too failed. Both the legislative efforts failed due to lack of support and reasonableness, and the effort to find a court case floundered because of lack of a reasonable case. The decisions in Boston, Louisville and Wilmington all had sound legal foundations and thus could not be tampered. Again the backbone which much of the federal role had been based was the courts and their reasonable consistency and equity in judging school desegregation cases, especially the Supreme Court.

An important federal partner to the enforcement role is programmatic assistance. There are primarily two assistance programs in school desegregation. One is Title IV (Section 401-405) of the 1964 Civil Rights Act (PL88-352) and the other is Title VII of the 1972 Education Amendments (PL92-318), better known as the Emergency School Assistance Act (or ESAA[1]) Both are of primary importance in the current federal role in desegregation since they provide technical and financial assistance to local education agencies and funds to state agencies.

Title IV has four components: the funding of (a) General Assistance Centers (GACs) to provide technical assistance and training services to local school districts; (b) State Education Agencies to do the same as 'a'; (c) establish monies for desegregation training institutes; and (d) provide monies directly to local education to have desegregation specialists and many times have inservice training. (Crocker, et.al., 1976.) These programs are a part of the U.S. Office of Education's Equal Education Opportunity Programs. In the early days of desegregation, Title IV had extensive impact in the South, since it provided funds to local systems for an individual to work on desegregation problems and to help prepare desegregation plans. In conjunction with this, each southern state had funded a GAC to provide, on request, technical assistance in a variety of areas, such as curriculum, staff development, human relations and planning for desegregation. The technical assistance was described in the Act as providing "information regarding effective methods of coping

with special educational problems occasioned by desegregation." As desegregation has expanded to other areas of the nation, several other GACs have been funded. Presently, a total of 26 are funded to serve a state or states. (The State Education Agency component of Title IV will be more fully discussed in The State Role section of this chapter.) This program is one of the two federal efforts in helping ease the difficulty in desegregating schools. It would be a true condemnation of the federal system if no aid was given to systems to assist in implementing desegregation, however, it need not be the only aid which it has been for the most part. Title IV is only a small amount of dollars, approximately $21.7 million in 1975, and must be divided among four different programs. There are some difficulties in the program. Improvement would enhance this part of the federal role. In part, the criticism made in the recent Rand report on Title IV (Crocker, et.al., 1975:1-3) are valid. The program is complicated and lacks any clear sense of direction. Nor is there any evaluation of the effectiveness of the GACs in providing technical assistance. This is supposed to be a national program, but lacks a ~~national~~ direction or coordination to improve the desegregation process and even have substantial impact. Also, the dollars are just a dent for the amount of work that could be done with local systems. It is a valiant attempt at a federal assistance role but could be a great deal more if more funds were available along with a strong monitoring and evaluation program. Other synthesized conclusions will be made at the end of the chapter. This prior discussion has been primarily concerning the GACs. Little is done or can be done on the direct funding of LEAs unless there is strong evidence that the funding is not being used to assist desegregation specialists and periodic systematic reviews. This would be an overwhelming task considering the hundreds of specialists which are funded. Similarly, oversight and evaluative measures could be employed in making sure the Training Institutes have the necessary impact. This, too, is hard to measure but there are fewer institutes than GACs or specialists.

The program with the big dollar clout is that of the Emergency School Aid (Title VII) which has 10 times the funds as Title IV. ESAA funds

(and its forerunner ESAP) are directed at both local education agencies and nonprofit organizations which are qualified (in compliance or having an acceptable desegregation plan). The purpose of this program as part of a federal "programmatic assistance" desegregation role is to assist school systems undergoing school desegregation to implement programs not ordered by the court which will facilitate the desegregation process and improve educational opportunities. The law reads that the funds are to be used to reduce racial isolation; to meet special needs incident to the elimination of minority group segregation and discrimination among students and faculty; and to aid school children in overcoming the educational disadvantages of minority group isolation. (PL92-318, Section 702, 1972:119.)

Some perceive this program to be a carrot which would make it financially worthwhile to local systems to desegregate. However, it really is not. Since the act provided assistance to establish programs to promote and implement desegregation, the federal role became one of assisting and enticing to abide by the law, even voluntarily, if the district wished! There is no question about the excellent intentions of the legislation, but, as in the case of Title IV, there are several shortcomings to Title VII. The Act falls short in assisting districts.

Some of the problem areas are: year-to-year funding; allowing only districts in compliance or having acceptable plans to be eligible for funds; only funding activities not ordered by the court; no requirement for relating one year's program to the next; and not enough dollars. However, with all its faults, ESAA has still provided much needed financial assistance to local education agencies and nonprofit groups to make their efforts possible in affecting school desegregation.

Both Title IV and Title VII have provided programmatic assistance in an effort to carry through with school desegregation, whether it be mandated by the courts (primarily federal), OCR, state agencies or

voluntary. For the most part, the districts which have received monies have had some contact with one of the enforcement arms of the federal role. In this way, the two assistance programs complement the enforcement components in helping make school desegregation a reality. Without much purposefulness, the two have worked reasonably well together while not being formally tied in any way, as one might assume, since they are all part of a federal role in school desegregation.

This section's discussion has tried to tie together the four areas. Least explicit has been the "legislative control" role. There is a lengthy history of legislative activity which can be characterized as anti-school desegregation or anti-busing (if you like). Some of the efforts have passed either the House or the Senate, but few have become law. Most recently passed and enacted was the Byrd Amendment (PL94-2061) in 1976, which forced HEW not to require the transportation of any student to a school other than the one closest to his home. This is quite similar to the Esch Amendment passed in 1974 which measured the limits that courts could order busing. Other bills have been considered to limit the HEW role, while others try to find new incentives and alternatives for school desegregation. Two of the latter are the Preyer and Glenn Bills. The Glenn Amendment passed the 94th Congress to establish funds for magnet schools and neutral school sites as part of Title VII. Representative Preyer's Bill or the "National Education Opportunities Act" attempts to give federal funding to state and local education agencies to plan voluntary desegregation. For the most part, hundreds of anti-busing pieces of legislation are introduced each session and, in fact, after 2 weeks of the 95th Congress four such bills were introduced in the House. Each of the major efforts to limit the role of the federal courts has been defeated, even the notion of a constitutional amendment has been defeated by the Democratic House Caucus.

Even though the Byrd/Biden Amendment of the 94th Congress repealed the HEW power to withhold monies from noncomplying systems, it still did

not tamper with the role and function of the courts. In fact, the legislation, after prohibiting HEW's ability to order the transporting of students, states: "...unless such transportation is specifically required by a final decree of a court of law." (PL94-2061.)

Thus, federal legislation has had a two-pronged federal role. On the one hand, it has been part of the means to achieving the end of school desegregation through the passage of such bills as the Civil Rights Act of 1964, Emergency School Assistance Act (both PL91-380, PL92-318), and numerous appropriations bills to pay for assistance programs. And on the other hand, it has tried to limit the role of the courts in its efforts to dictate the methods and processes involved in implementing school desegregation. However, these have not been very successful.

It is difficult to have a very orderly discussion of the federal role in the topic of school desegregation. There are many complexities to this issue which have surfaced during the discussion. What has been presented is a lengthy overview of the role and function of the federal government as it attempts to implement a federal policy in school desegregation.

THE STATE ROLE

There is definitely a different role being performed by states[2/] than the federal government. Even though there are 50 separate states, each having the constitutional responsibility for the education of the children of that state, a general statement can be made about the role and effort in school desegregation. It has been minimal to nonexistant in most states. Few states have really played decisive roles in forcing the elimination of segregation in public schools through each state. It is at most a dozen by 1976 which are actually participating at the same time with the federal effort to initiate desegregation policies and plans. There is no question that "states play a decisive role in public education and state assistance can greatly increase the change of developing positive, educationally effective desegregation plans." (Congressional Record, No. 84, June 3, 1976.)

The state role has definitely changed since the 1930s, 1940s, and even 1950s. For the most part, the distinctive state role was in the southern and border states, since many of these states had dual school systems established by state statute. Brown I was the beginning of the end of dual systems which were finally mandated illegal in Alexander v. Holmes (requiring unitary systems). Not all states reacted similarly in the 1950s and 1960s. Some districts within states with laws mandating dual systems slowly changed to unitary ones while others fought desparately to maintain the status quo. For the most part, though, it was the federal courts and agencies which pushed the change and not the states.

Some of the blatant acts, such as those by Governors Faubus and Wallace, are well known, but probably the activities associated in New Orleans and the state of Louisiana are the epitome of resistance. As Frank Read (1975:15) describes it:

> "By the end of the decade, backed by the Fifth Circuit and in the face of attitudes from all flanks, Federal District Judges J. Skelly Wright and Herbert Christenberry had invalidated a total of forty-four statutes enacted by the Louisiana legislature; had cited and convicted two state officials for contempt of court; and had issued injunctions forbidding the continued flouting of their orders...."

The state of Florida, on the other hand, is a more positive example. In the early 1970s, county-wide desegregation efforts (not necessarily voluntary, but once ordered they were implemented efficiently and effectively) were undertaken rather than many small local plans. For the most part, school desegregation has been accomplished in the South. This was not because of a strong state role since there was resistance to being ordered to form unitary school systems (not a voluntary action).

schools has decreased drastically by the willingness of southern school systems and state governments to work with federal agencies to comply with court orders and HEW/OCR regulations.

There are several components to the state role as there are in the federal role but they are not fully interchangeable with them. State courts have had (and continue to have) the responsibility to decide cases which violate state statutes regarding school segregation, while state legislatures continue to have a responsibility to initiate legislation for equal educational opportunity. This is probably the weakest component of the state role. The state's governor may have a role in desegregation in the way Governor Dukakis of Massachusetts acted during Boston. Gubernatorial support for the action and during the implementation is important in that it indicates endorsement of desegregation. But, for the most part, critical state education policy decisions are made by the Chief State School Officer (to be called "Chief") of the state in conjunction with his/her state board of education. (Only a few states such as Florida and Wisconsin do not have state boards.) The state board makes rules and regulations governing education, but many times have a very limited and low profile role especially in school desegregation. The last component, which is really one and the same with the Chief since he/she is the head, is the State Education Agency (SEA). In the area of school desegregation the SEA establishes equal educational opportunity guidelines and provides (in most states) technical assistance to school systems through either their Title IV or Equal Educational Opportunity office.

The most crucial role is that of the SEA. SEAs are the key to establishment of a state policy and role in school desegregation. As mentioned in the previous paragraph, the SEA has the responsibility to establish guidelines and rules for equal education opportunity whether or not there is a state statute. The impetus usually carries from the Chief as it has in North Carolina, Massachusetts, New York, New Jersey, Illinois, Iowa, Minnesota, Rhode Island and California. Many southern states do not have

strict guidelines, since desegregation was accomplished by the federal OCR guidelines. Pennsylvania is different in that the role has been of both the SEA and the State Human Relations Commission.

The Equal Education Opportunity or Title IV section of the SEA usually becomes the primary functionary for pushing school desegregation, which includes a compliance review authority. When this is the case, there is usually some state funding commitment to broaden the scope of work. It is then that a more effective state role evolves. New York and Illinois are two such states. But since states are separate governmental entities, so are the variety of guidelines and statutes which indicate the strength and parameters of the SEA's authority to require equal education opportunity.

In most states Title IV provides technical assistance to school systems to help in the desegregation effort. This is what the federal funding is supposed to pay for, but this activity is rarely coordinated with its counterpart, the General Assistance Center. This does not make the state role ineffective but limits the effectiveness of the dual role in providing technical assistance to desegregating school systems.

The compliance review power of the SEA only acts if there are state regulations and a procedure by which the state can make districts comply. Few states have this strong role. Recently Illinois and New Jersey, through the leadership of their respective Chiefs (Joe Cronin and Fred Burke) and the state boards, have begun to initiate compliance review actions to eliminate racial segregation in school systems and to require the development of acceptable plans.

Fundamental to the strong state role is a statement by the State Board of Education to require equal education opportunity and guidelines for insuring its enforcement. This, to some extent, depends on state law. In some cases, the legal requirement may have to be filled by the state

legislature. This body has been the least responsive to act and take an affirmative state role. Several state boards are now working with their State Education Agency as in Nebraska, to establish viable standards for equal education opportunity. In Illinois, the state board and SEA are developing a hearing process to try the districts which have been found in noncompliance with existing state board guidelines. Another instance of collaboration for a strong state role is New Jersey. In 1969, the state board resolved to allow the State Commission of Education, under state board policy, to be able to undertake steps that it deems necessary to correct conditions of racial imbalance, which includes the power to impose a plan on a system as was done to Roselle in 1976.

In discussing the state role in school desegregation, Wisconsin needs to be mentioned because of two recent occurrences. Wisconsin is the only state which has a law which legislates cross-district transfers. Dennis Conta initiated this legislation to assist in voluntary desegregation efforts between urban (primarily Milwaukee) and nearby suburban districts. The state also has guidelines for equal education opportunity. However, in a recent memorandum written on November 28, 1976 by the State Attorney General, Bronson LaFollette, and requested by State Superintendent, Dr. Barbara Thompson, it was stated that "the Department of Public Institutions (in Wisconsin) does not have authority to determine whether public schools are segregated or the authority to take enforceable action to desegregate public schools." If similar decisions are to be made by State Attorney Generals, then there is a very limited state role in requiring school desegregation unless either there is a state law giving the SEA authority or waiting for a suit to be filed in a state court claiming a constitutional violation by the state or a local school system.

The courts may be the medium which forces a greater role in states that have not begun to enforce federal or state guidelines in equal education opportunity. Most recently, Judge Frank Battisti, in Reed v. Rhodes/ Gilligan (Cleveland), found the State Education Agency to have contributed

to the segregation of schools in Cleveland. This is one of the few such verdicts which established a link between local school segregation and State Education Agency actions.

School desegregation verdicts have also been made in state courts as in California (Los Angeles) and Illinois. This could mean a more vigorous role for state courts in enforcing laws and constitutional rights. The decision, if nothing else, should signal to states that the time is ripe to begin to move towards either establishing viable guidelines or enforcing existing guidelines on equal education opportunity.

Another part of the state role is presently being decided. Courts are determining whether or not a federal court can require the state government to spend unappropriated funds for implementing school desegregation in a city or cities of the state. This has to do with a court ruling requiring the State of Michigan to pay for certain costs incurred during school desegregation. The decision will be very significant since it will determine state fiscal responsibility (role) to help implement school desegregation. In Massachusetts, the SEA paid for all school transportation in Boston required by the court order.

There has not been a detailed description of each and every state's statutes and guidelines for the reason that it would be of little value. The statutes and guidelines vary from recommended standards to specific rules as to racial composition of individual schools within a system. It seems that the most sophisticated states are Illinois, New York, New Jersey and Massachusetts, but several others are not far behind, such as Pennsylvania, Iowa and Minnesota. Some states do not need very detailed equal education opportunity guidelines for school desegregation because of the minimal number of minority students. However, this really should not make any difference, since there is no excuse for segregation in schools and a lack of state enforcement of the right to equal education opportunity. At most, 15 states have reasonable guidelines and statutes covering school desegregation, but not all of them are

enforcing them. A reason for the heavy federal role and hand in desegregation is because states have previously taken no responsibility for equal education opportunity -- in fact, abdicated their constitutional responsibility. The current state attitude seems to be different and there are strong indicators that many SEAs and state boards want that responsibility and are beginning to show it through recent actions. The state role cannot totally replace the federal role, but it can lessen the need for federal enforcement intervention at the local school district by the SEA becoming the compliance review authority.

CONCLUSION

There is no question that both the federal government and the states have important roles and functions in education, especially one to assure equal education opportunity. Probably the most significant part of the federal role is its performance as the pacesetter and catalyst on social issues School desegregation has been no different. The courts and legislation have attempted to change the education system to make more equitable opportunities (Fourteenth Amendment). The states have followed suit but not with great vigor. In the South, it was the heavy hand of the courts and sometimes the cajoling from HEW (Washington) which helped to eliminate dual education systems. In the North, the courts have recently become the ogre through the issuance of court orders to desegregate. The positive and active federal role has become somewhat limited during the last 8 years by the less than supportive leadership of the President. This has not prevented a federal role, but it has curtailed the vigorous enforcement role and standards established by the courts in the late 1960s. Even with a less than supportive verbal policy from the Chief Executive, HEW federal offices have continued to employ programs to encourage and implement school desegregation.

States have played a very limited role in comparison. Although, state regulations and statutes exist, their enforcement in most states has not been expansive. As has been stated, New York, New Jersey and

Illinois state departments of education have recently been quite vigorous in requiring compliance. Massachusetts did the same until the Racial Imbalance Law of 1965 watered down. There is great room for improvement. Given that several court suits include the state as the defendent has caused a re-evaluation by State Education Agencies and boards, and the Governor, of their role in the desegregation process. Ohio and Delaware are recent examples of states named in suits. This active new role is not being taken by the state legislatures.

There are several things which can be done to strengthen the individual roles of the federal government and states, as well as improve a collective role to insure compliance and implementation of desegregation plans. The following are some policy suggestions which relate to broadening the current scopes of federal and state activities.

For the Federal Role

a. Federal programs in general which assist the school desegregation process need to have a firm direction and policy, especially Title IV.

b. The regulations governing Title IV General Assistance Centers need to be changed to allow technical assistance to community groups, and to teacher groups and organizations.

c. A federal program needs to be established to provide monies for a state planning function for equal education opportunity, if it does not exist in the State Education Agency.

d. Emergency School Aid Grants need to be a multiple-year funding so that programs have continuity. This would enhance possibilities of continued compliance with Title VI of the Civil Rights Act.

e. Improvement on the impact of ESAA monies would be the altering of the allocation of funds formula by: (1) giving a larger percentage of funds to nonprofit organizations, and (2) allowing unused ESAA monies from one state be returned to the regional office for reallocation rather than to a general fund for national distribution.

f. A change in regulations is needed in order that ESAA monies can be used for projects required by the court. This would be a broader use of the monies.

g. Eligibility criteria for ESAA funds need to be changed in order that districts without acceptable plans or not in compliance can receive monies to bring themselves into compliance or develop acceptable plans. This "Catch 22" works against assisting systems in beginning the desegregation process. This change would allow more flexibility in developing local desegregation efforts.

h. There needs to be new programs within existing programs which provide better incentives for school desegregation at the local level. This would not increase the federal role but indicate an interest in assisting the process.

For the State Role

i. There needs to be an increased level of funding by states, which will indicate their interest and commitment to school desegregation, rather than only federal funding of programs. Such funding could be directed in the areas of planning, compliance review and LEA assistance.

j. Regulations which require desegregation planning in all systems which have racial minority populations need to be instituted in all states.

k. States must begin to enforce equal education opportunity statutes and regulations which is their responsibility. This would include, when possible, an increased role for state courts and state boards to provide leadership.

Combined Roles

l. There needs to be developed comparability between OCR compliance standards and state standards. By having some consistency in compliance, a lessening in review procedures and in harassment of local education agencies. If nothing else, it is an act which shows intent to better coordinate similar roles. It may also lessen duplication of compliance review since at present OCR's criteria are not usually compatible with states' nor is state compliance by an LEA tantamount to OCR acceptability. A theme of consistency in standards needs to be established.

m. There is a need for better coordinated roles between the SEA and the GAC. Technical assistance is crucial during the desegregation and by working together their separate roles can be more effective.

Finally, the federal role cannot diminish because it provides both the necessary outside financial and programmatic supports required by school desegregation and a conscience through courts, legislation and compliance review to insure adherence to the Constitution. As the federal role remains strong, the state role must expand as it is its responsibility under the Constitution to require equal education opportunity for its citizens. The two do not necessarily have to run counter to each other (not to be counter productive) but can be complementary and help in instituting better school desegregation. Both have a role but need to be coordinated to increase their impact on school systems for effective school desegregation.

NOTES

1. It should be noted that the forerunner of the present ESAA program was the Emergency School Assistance Program or ESAP (PL9I-380) passed in 1970 which had similar provisions in trying to provide interim emergency assistance to the nearly 1,000 school districts which were either under court order or voluntary Title VI plan to desegregate formerly de jure segregated districts by the 1970-71 school year. This was a supplemental budget request by the President for $150,000,000 as discretionary grants. However, the initial funding was $75,000,000. (USOE, 1972:5-7.)

2. Courts, education agencies, state boards of education and legislatures are generalized here; when necessary will be specified in the discussion.

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